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No. 93-823

In The

Supreme Court of the United States

October Term, 1994

STATE OF NEBRASKA, DEPARTMENT OF REVENUE,

Petitioner,

v.

JOHN LOEWENSTEIN,

Respondent.

On Writ of Certiorari
To The Supreme Court of Nebraska

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

Respondent presents five arguments in support of his position that income he received from mutual funds derived from repos involving federal obligations is exempt from Nebraska taxation under § 3124. First, Respondent argues that repos are "merely a way for multiple taxpayers to share income exempt from state taxation" and that repos are simply a device allowing the parties to "collectively purchase a federal obligation" in which they "have allocated among themselves the total interest paid by the federal government which is exempt from taxation." Brief of Respondent at 2, 4. Respondent argues that repos provide a vehicle by which the parties "divide" federal interest. Brief of Respondent at 31. Second, he argues from this premise that Nebraska's taxation

of distributed repo income "is a form of taxation which requires that the obligations, the interest thereon, or both, be considered, directly or indirectly, in the computation of the tax." Brief of Respondent at 5. Third, Respondent contends that the economic substance of repo transactions should not govern taxability, but, rather, that the "parties' intent" should be respected. He further asserts that federal court precedents applying an economic substance test in analyzing the taxability of income from repos involving state and local obligations have been obviated by changes to the Internal Revenue Code, making "their rationale no longer viable under present law." Brief of Respondent at 35. Fourth, Respondent argues, for the first time, that Nebraska's taxation of repo income derived from federal obligations unconstitutionally discriminates against federal obligations. Finally, Respondent claims that Nebraska's tax would adversely affect the borrowing ability of the United States. None of these contentions have merit.

I. INCOME FROM REPURCHASE AGREEMENTS INVOLVING FEDERAL OBLIGATIONS DOES NOT CONSTITUTE AN "ALLOCATION" OR "DIVISION" OF INTEREST ON THE OBLIGATIONS PAID BY THE FEDERAL GOVERNMENT.

Respondent characterizes repos as "merely a way for multiple taxpayers to share income exempt from state taxation" and asserts that repos provide a means for parties to the repo transaction to "divide" federal interest. Brief of Respondent at 2, 31. Respondent's position is incorrect, as it is based on an erroneous characterization

of the nature and effect of transactions involving repurchase agreements.

The repos engaged in by the Trusts are agreements in which a party owning federal obligations and seeking cash, the seller-borrower/repurchaser, "sells" the obligations to the Trusts, the buyer-lender. The repo provides that the seller-borrower/repurchaser agrees to repurchase the obligations, and the buyer-lender agrees to resell the obligations, at a later date or on demand, plus an agreed upon rate of "interest" to be paid by the seller-borrower/repurchaser (J.A. 65-66). The "interest" paid by the seller-borrower/repurchaser is based on prevailing market rates paid on loans or financing transactions of similar maturity and risk; it does not bear any relationship to the interest rate or yield on the federal securities. *Matter of Bevill, Bresler & Schulman Asset Management Corp.*, 67 B.R. 557, 567 (D.N.J. 1986) ["*Bevill*"].

The "interest" received by the Trusts under their repos and distributed to Respondent is merely "interest" income paid to the Trusts by private party seller-borrower/repurchasers; it is not "interest" paid by the United States on the federal obligations. Indeed, the repo agreements entered into by the Trusts provide that any interest paid on the obligations during the term of the repurchase agreement must be paid to the seller-borrower/repurchaser (J.A. 69). Virtually every state court addressing the issue of the taxation of income from repos involving federal obligations distributed to mutual fund shareholders has held such income is not exempt under § 3124, as the Trusts do not receive interest income on the obligations, but, rather, receive "interest" paid by the seller-borrower/repurchaser at the rate agreed to by the

parties on the Trusts' loan to the seller-borrower/repurchaser. Brief of Petitioner at 31, n.15.[1]

The "interest" element in the Trusts' repurchase agreements does not in any sense represent interest paid by the United States on federal obligations. The "interest" represents the consideration paid by the seller-borrower/repurchaser to the Trusts for the use of funds which were, in essence, loaned to the seller-borrower/repurchaser by the Trusts. Such "interest" is not based on or otherwise attributable to interest paid on the obligations by the United States; rather, it is based on a rate agreed to by the parties, which reflects market interest rates for loans or financing transactions of comparable maturity and risk. The "interest" income received by the Trusts and distributed to Loewenstein was not interest paid by the federal government, and, therefore, does not constitute a "division" or "allocation" of interest on federal obligations.[2]

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[1] Respondent is therefore mistaken in his assertion that the $250 of interest received by Taxpayer 2 in his analysis involving a repurchase agreement at pages 28 through 31 of his brief is a "portion of the tax-exempt interest paid by the federal government [which] petitioner seeks to tax in violation of 31 U.S.C. § 3124 (1988)". Brief of Respondent at 29-30. The interest received by Taxpayer 2 in this hypothetical, as well as the interest received by the Trusts under their repos, is not any "portion" of "interest paid by the federal government". It is simply "interest" paid by the seller-borrower/repurchasers pursuant to the repo agreement.

[2] Respondent, at various points, refers to the Internal Revenue Code's treatment of debt instruments with "original issue discount" ("OID"). Brief of Respondent at 8, 27, 31; *see* I.R.C. §§ 1271 to 1276. Generally, the Code's OID rules require that the **holder** of a debt instrument issued with OID must include part of that OID in gross income as interest in each year it holds the

The fallacy of Respondent's position is evidenced by his analysis of various hypotheticals involving Nebraska's tax treatment of income under different scenarios. Brief of Respondent at 25-31. In the first scenario, a Nebraska taxpayer, Taxpayer 1, purchases a 360 day, $10,000 treasury bill for $9500. At maturity, the obligation is redeemed for $10,000, resulting in $500 of income taxable at the federal level. This income would be exempt from Nebraska income tax. Neb. Rev. Stat. § 77-2716(1)(a) (Supp. 1993). In the second scenario, Taxpayer 1, after holding the obligation for 180 days, sells the obligation to another Nebraska party, Taxpayer 2, for $9750. At maturity, the obligation is redeemed and Taxpayer 2 receives $10,000. In this case, Respondent asserts both Taxpayers derive federal taxable income of $250, and that the income received by each taxpayer would be exempt from

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debt instrument even though the OID is not paid until maturity. I.R.C. § 1271. Respondent's references to the OID provisions of the Code are inapposite for several reasons. First, the record does not reflect what portion, if any, of the "Eligible Securities" subject to the Trusts' repos involved federal obligations that were issued at a discount. The repo agreements do not specify that the securities must be obligations issued with discount. Second, the record reflects nothing as to how either the Trusts (or seller-borrower/repurchasers) report income for federal tax purposes. In any event, the OID provisions of the Code address only the accrual of interest income by the **holder** of debt instruments in a substantive sense. *See* B. Bittker and L. Lokken, ***Federal Taxation of Income, Estates and Gifts***, ¶ 56.4.2 (2d ed. 1989) (While "[n]either the statute nor the proposed regulations define the term 'holder' . . . , [p]resumably it refers to the person who is the owner of the obligations under general concepts of tax ownership."). Under this definition, the Trusts would not be the "holder" of federal obligations subject to repos, and, accordingly, the OID rules cited by Respondent are inapplicable.

Nebraska income tax. From these hypotheticals, Respondent makes four conclusions. The fourth conclusion Respondent draws, that "the total amount of income exempt from state taxation must equal the amount of interest paid by the federal government", however, does not follow with respect to his further analysis of the transaction involving the Taxpayers when engaging in a repurchase agreement. This analysis does not hold true where, as under a repurchase agreement, Taxpayer 1 has borrowed funds to acquire or hold the federal obligation, rather than engaging in an outright sale transferring the obligation to a second party.

To illustrate, assume that Taxpayer 1 borrowed $9500 from Taxpayer 2 to acquire the federal obligation, and agreed to pay Taxpayer 2 the principal amount plus $250 interest. The amount of income received by Taxpayer 1 on redemption ($500) would be offset by the amount of this interest expense, resulting in federal taxable income of $250 to Taxpayer 1. Taxpayer 2 would also have $250 of federal taxable income, reflecting the amount of interest received pursuant to the loan agreement. For Nebraska tax purposes, Taxpayer 1 would receive an adjustment reducing taxable income by $250, the net amount included in federal taxable income Neb. Rev. Stat. § 77-2716(1)(e)(i) (Supp. 1993). Taxpayer 1 therefore has no Nebraska taxable income. Taxpayer 2 would have $250 of income taxable at the state level resulting from Taxpayer 1's repayment of the principal plus interest pursuant to the loan agreement.

Under Respondent's view, the $250 of income received by Taxpayer 2 under this loan agreement must be exempted from state taxation because the entire

amount of interest paid by the federal government is not reflected as an adjustment for interest paid on a federal obligation on the Nebraska returns of Taxpayer 1 and Taxpayer 2. This is not true where, as in this example, the owner of a federal obligation has borrowed funds to acquire or hold the obligation. Nor is it true in the instant case, where the Trusts received income from seller-borrower/repurchasers, which was distributed to Respondent, based on a rate of interest paid to the Trusts under repos secured by federal obligations, and not interest income paid by the federal government on federal obligations. Respondent in essence argues that Nebraska must, under § 3124, exempt distributed income received by the Trusts under repos secured by federal obligations as the equivalent of interest paid on the obligations by the federal government. Section 3124 does not require this result.

II. NEBRASKA'S TAX ON REPO INCOME DISTRIBUTED TO MUTUAL FUND SHAREHOLDERS DOES NOT CONSIDER, DIRECTLY OR INDIRECTLY, FEDERAL OBLIGATIONS OR THE INTEREST ON FEDERAL OBLIGATIONS.

Section 3124, by its terms, prohibits only any "form of state taxation that would require the [United States government] obligation, the interest on the obligation, or both, to be considered in computing a tax. . . . " 31 U.S.C. § 3124(a). The statute means that a state may not "take[ ] into account, or include[ ] in the accounting" the value of the federal obligation itself or the interest on that obligation in determining tax liability. *American Bank and Trust Co. v. Dallas County*, 463 U.S. 855, 862 (1983).

Computation of Nebraska's tax on distributed repo income received by Loewenstein did not require consideration of any federal obligation or the interest on any federal obligation. Repo income earned by the Trusts was received from private party seller-borrower/repurchasers to compensate the Trusts for the use of funds provided by the Trusts. The repo "interest" rate was not related to the yield or interest rate of the federal obligation, but was based on the market rate for loans or financing transactions of similar maturity and risk. Repo income is the amount paid by the seller-borrower/repurchaser to the Trusts for the use of money; it is not interest income paid on federal obligations by the federal government.

In arguing that § 3124 mandates that Nebraska exempt repo income, Respondent refers to the Court's language in *American Bank and Trust Co. v. Dallas County*, that the exemption is "sweeping: with specific exceptions, it 'extends to *every form* of taxation that would require that either the obligations or the interest thereon, or both, *be considered, directly or indirectly, in the computation* of the tax' (emphasis supplied)". 463 U.S. at 862 (*citing Memphis Bank & Trust Co. v. Garner*, 459 U.S. 392, 395-96 (1983)). Nebraska's tax, however, does not even "indirectly" consider a federal obligation or the interest on a federal obligation in its computation. Both Respondent and the court below would extend the exemption beyond its statutory context to read the term "indirectly" as a ban on any form of state tax on income which is somehow "indirectly" connected to a federal obligation. Income received by the Trusts and distributed to Respondent is not even remotely connected to a federal obligation; in no way is it the interest paid by the federal government on a federal

obligation. Respondent's position, adopted by the Nebraska Supreme Court, is contrary to the Court's recognition that the 1959 amendment placing this language in the statute "did not broaden the scope of the exemption beyond that mandated by the Constitution", *First Nat'l Bank of Atlanta v. Bartow Cty. Bd. of Assrs.*, 470 U.S. 583, 593 (1985), but was only "intended to abolish the formalistic distinction between **taxes on** income and taxes **measured by** income" *Id.* at 594 (emphasis in original). The income subject to Nebraska tax is interest paid by private party seller-borrower/repurchasers for the use of funds provided by the Trusts. The tax does not "consider" a federal obligation or the "interest" on a federal obligation within the meaning of § 3124.[3]

Loewenstein continues to misconstrue the language of § 3124 by asserting the statute mandates the exemption of "income" derived from transactions "in consideration of [ ] federal obligations." Brief of Respondent at 7. The statute prohibits only state taxes which, in their computation, consider a federal obligation or the interest paid by the federal government on the obligation. Nebraska's tax does neither.

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[3] Even if the Court were to recognize the repo transactions involving the Trusts as true sales and repurchases, this would not lead to the conclusion that Nebraska's tax violates § 3124. Section 3124 does not immunize from state taxation "owners" of federal obligations. The exemption required by § 3124 extends only to taxes the computation of which require consideration of a federal obligation or the interest on the obligation. The income received by the Trusts under its repo agreements came from neither of these sources; rather, it was income received by the Trusts resulting from the other party's payment of "interest" for the use of funds for a certain period of time.

III. THE ECONOMIC SUBSTANCE OF REPURCHASE TRANSACTIONS SHOULD DETERMINE THE TAXABILITY OF REPO INCOME.

Respondent contends that the economic substance of repo transactions should not govern taxability, but, rather, that the "parties' intent" should be respected. He also asserts that federal court precedents applying an economic substance test in analyzing the taxability of income from repos involving state and local obligations have been obviated by changes to the Internal Code, making "their rationale no longer viable under present law." Brief of Respondent at 35. Respondent is wrong on both counts.

The Court has long recognized that the economic substance of a transaction controls its tax treatment rather than the form that the transaction takes. "In the field of taxation, administrators of the laws and the courts are concerned with substance and realities. . . . " *Helvering v. F & R Lazarus & Co.*, 308 U.S. 252, 255 (1939). *See also Commissioner v. P.G. Lake, Inc.*, 356 U.S. 260, 266-67 (1958) (substance, not form of transactions, is controlling; "[t]heir essence is determined not by subtleties of draftmanship but by their total effect").

In support of his claim, Respondent relies principally on this Court's decision in *Frank Lyon Co. v. United States*, 435 U.S. 561 (1978). In *Frank Lyon Co.*, the Court considered the federal income tax treatment of a sale and leaseback transaction in which Frank Lyon Company took title to a building under construction by a second entity, and simultaneously leased the building back to that entity for long-term use. The Commissioner determined that Frank

Lyon Co. did not possess ownership of the building for tax purposes, and denied income tax deductions taken by the Company for expenses related to the building. *Id.* at 562, 568. The Court rejected the Government's claim that "[a]lthough the arrangement was cast in sale-and-leaseback form, in substance it was only a financing transaction", and that the transaction should "be regarded as a sham." *Id.* at 573. The Court held

> that where, as here, there is a genuine multiple-party transaction **with economic substance** which is compelled or encouraged by business or regulatory realities, is imbued with tax-independent considerations, and is not shaped solely by tax-avoidance features that have meaningless labels attached, the Government should honor the allocation of rights and duties effectuated by the parties.

Id. at 583-84 (emphasis added). The Court admonished, however, "that we are not condoning manipulation by a taxpayer through arbitrary labels and dealings that have no economic significance." *Id.* at 583.

Frank Lyon Co. provides little support for Respondent's position. The Court in that case found that the transaction at issue did, in fact, have true "economic substance". Here, in contrast, the repo agreements entered into by the Trusts do not, by their terms, possess true "economic substance" as purchases and sales of federal obligations. The terms of the "General Repurchase Agreement" used by the Trust when engaging in repos illustrate that, in economic substance, the transactions were loans by the Trusts to the seller-borrower/repurchasers in which federal obligations functioned as

collateral (J.A. 65-71; Brief of Petitioner at 27-29). Virtually every state court addressing the taxability of repo income has determined that, in economic substance, the transactions are secured loans in which federal obligations serve as collateral, and the interest received by the buyer-lender is "interest" on the loan paid by the seller-borrower/repurchaser at the rate agreed to by the parties, not interest paid by the federal government on the obligations. Brief of Petitioner at 25-31, n.15. These courts properly recognized that substance, not form, is the relevant inquiry in determining the taxability of repo income under § 3124.[4]

Respondent further argues that federal court precedents applying an economic substance test in analyzing the taxability of income from repos involving state and local obligations have been obviated by changes to the

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[4] Respondent makes reference to opinions by the Attorneys General of several states discussing the authority of state officials to engage in repo transactions and whether those transactions violated state constitutional provisions against lending the credit of the state. Brief of Respondent at 20-25. Petitioner has previously acknowledged that repo transactions may be characterized differently depending on the context in which they are considered. Brief of Petitioner at 22 n.10. In tax cases, however, repos should be judged by their substance, not mere form. Moreover, as noted by amicus curiae Investment Company Institute ["ICI"] and the Federal Reserve Bank of New York ["FRBNY"], the terms of repo agreements outside the mutual fund context may be different than the terms under which the Trusts engaged in repos. Brief of Amicus Curiae ICI at 18; Brief of Amicus Curiae FRBNY at 4 & n.3. There is nothing to indicate that the repurchase agreements addressed in the opinions of the several state Attorneys General cited by Respondent resemble the agreements entered into by the Trusts.

Internal Revenue Code, making their "rationale no longer viable under present law." Brief of Respondent at 35.[5] Respondent misconstrues the effect of the amendments to the federal tax code, and their asserted impact on the continued vitality of these federal court cases.

Prior to 1982, financial institutions generally could hold exempt obligations without losing a deduction for interest paid on their deposits. *See* Rev. Rul. 61-222, 1961-C.B. 58. As Respondent notes, § 902 of the Tax Reform Act of 1986 added I.R.C. § 265(b), which generally disallows any deduction to financial institutions for interest allocable to tax exempt obligations.

What Respondent fails to recognize, however, is that *Union Planters* and other federal court decisions relied upon by Petitioner did not hinge on the application of § 265 to **banks**. Rather, the courts determined in these cases that, while the banks actually received interest on the municipal obligations under their repo arrangements with bond dealers, the true economic substance of the transactions was that the banks were not the owners of the obligations, and were therefore not entitled to the exemption from federal taxation under I.R.C. § 103. The bond dealers could not, under § 265, deduct interest incurred to purchase or carry tax exempt obligations. Thus, the interest income received by the banks was, in essence, imputed to the dealers; the amounts received by

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[5] *American Nat'l Bank v. United States*, 421 F.2d 447 (5th Cir.), *cert. denied*, 400 U.S. 819 (1970); *First American Nat'l Bank v. United States*, 467 F.2d 1098 (6th Cir. 1972); *Union Planters Nat'l Bank v. United States*, 426 F.2d 115, (6th Cir.), *cert. denied*, 400 U.S. 827 (1970).

the banks were therefore treated as interest payments from the dealers to the banks, not interest paid by the municipalities issuing the obligations. Contrary to Respondent's claim, *Union Planters* and other federal court decisions applying an economic substance test in analyzing repo transactions involving state and local obligations are still relevant in determining the question presented.[6]

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[6] Respondent misconstrues Nebraska's reference to the "double tax benefit" which would occur if income from repos involving federal obligations is exempted from state taxation under § 3124. The "double tax benefit" arises because Respondent (or, more accurately, the Trusts), do not own the federal obligations. The seller-borrower/repurchaser is the substantive owner of the obligations and is entitled to the interest on the obligations. The substantive owner is entitled to the exemption from state taxation for such interest. If, however, as in the case of a repurchase agreement, the seller-borrower/repurchaser incurs interest expense to carry the obligations, this will reduce the economic benefit of the exemption from state taxation. This is the result of Neb. Rev. Stat. § 77-2716(1)(e)(i) (Supp. 1993), the state law counterpart to I.R.C. § 265. Any diminution of the amount of the exemption, however, is the result of the borrowing engaged in by the seller-borrower/repurchaser. Requiring exemption of interest paid by the seller-borrower/repurchaser to the Trusts would result in the extension of the exemption under § 3124 to interest paid not by the federal government on its obligations, but to interest paid by a private party which has no connection whatsoever to interest on the federal obligations. It is this extension of § 3124 urged by Respondent, which would require Nebraska to provide an exemption for income earned by the Trusts and distributed to Respondent resulting from interest payments by the owner of federal obligations from loans secured by federal obligations, which constitutes an additional and unwarranted "double tax benefit".

IV. NEBRASKA'S TAXATION OF REPO INCOME DOES NOT DISCRIMINATE AGAINST FEDERAL OBLIGATIONS.

Respondent, for the first time, argues that Nebraska's tax is invalid because it discriminates against federal obligations in favor of state and local obligations. Brief of Respondent at 35-37. Nothing in the record supports this contention.

Petitioner acknowledges that the Court has struck down state taxes which discriminated against the federal government. *Barker v. Kansas*, ___ U.S. ___, 112 S. Ct. 1619 (1992) (state could not constitutionally tax U.S. military retirement benefits while not taxing state and local government retirement benefits); *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803 (1989) (state could not exempt retirement benefits paid to state employees while taxing retirement benefits paid by all other employers, including the federal government); *Memphis Bank & Trust Co. v. Garner*, 459 U.S. 392 (1983) (state could not include income from federal obligations in computation of bank tax while excluding income from state's own obligations). Respondent argues that, because Nebraska has no statute, revenue ruling, or regulation specifically addressing the taxability of repo income derived from state and local obligations (including Nebraska obligations), Nebraska's tax treatment of repo income distributed to Respondent by the Trusts impermissibly discriminates against federal obligations.

Contrary to Respondent's claim, no such discrimination exists. Repos involving state and local obligations, including Nebraska obligations, are treated the same. It is

true that, by statute, Nebraska does not require that income earned on Nebraska obligations be added back in determining Nebraska taxable income. Neb. Rev. Stat. § 77-2716(1)(c) (Supp. 1993). This does not, of course, establish that Nebraska treats income derived from repos involving state and local obligations, including Nebraska obligations, differently than it does income derived from repos involving federal obligations. Only interest income on Nebraska based obligations is addressed by § 77-2716(1)(c). Repo income, however, whether derived from transactions involving federal or state and local obligations (including Nebraska obligations), is not, for Nebraska tax purposes, considered interest paid on the underlying obligations, but, rather, is interest paid by the seller-borrower/repurchaser pursuant to repo agreements. Respondent, by interjecting this issue at this time, seeks to require Nebraska to prove a negative, i.e., that Nebraska discriminates in its treatment of repo income involving federal obligations because the particular Revenue Ruling at issue discusses only repo income derived from federal obligations. Nothing in the record supports Respondent's claim, and, in actuality, no such discriminatory treatment exists.

V. NEBRASKA'S TAX ON REPO INCOME DOES NOT DIMINISH THE MARKETABILITY OF FEDERAL OBLIGATIONS AND DOES NOT IMPAIR THE BORROWING ABILITY OF THE UNITED STATES.

Finally, Respondent continues to rely, as did the court below, on the deposition testimony of Peter D. Sternlight, former executive vice president of the Federal Reserve Bank of New York, in an attempt to establish that

Nebraska's tax would unconstitutionally diminish the marketability of federal obligations and impair the borrowing ability of the United States. Brief of Respondent at 39-40.

Nebraska has addressed at length the misapplication by the court below of the testimony of Mr. Sternlight. Brief of Petitioner at 42-45. In sum, Mr. Sternlight's testimony, contained in his affidavit submitted in a bankruptcy case, does not reflect any opinion or view as to the impact of state taxation of repo income on the investment attractiveness of federal obligations, nor does he opine that state taxation of repo income would impede the borrowing ability of the United States. Significantly, while not mentioned by Respondent, Nebraska's view of the misapplication of Mr. Sternlight's testimony by the court below is confirmed by amicus curiae the Federal Reserve Bank of New York. Brief of Amicus Curiae FRBNY at 8-10. FRBNY states that "[t]he *Loewenstein* court relief upon Mr. Sternlight's statements but appeared to have drawn some inferences from them that Mr. Sternlight did not intend and are unwarranted." Brief of Amicus Curiae FRBNY at 9. FRBNY specifically acknowledges that "[t]he Sternlight Affidavit does not mention taxes. Nor did Mr. Sternlight testify about taxes in his deposition." *Id.*

The Court has refused to find a prohibited effect on the marketability of federal obligations absent supporting evidence. *See First Nat'l Bank of Atlanta v. Bartow Cty. Bd. of Assrs.*, 470 U.S. 583, 597 (stating there was no evidence that removal of a tax shelter would "prompt banks to forgo the advantages of federal obligations, such as their extreme liquidity and safety, and to invest their money

elsewhere."). The same principle is applicable in this case. There is no evidence that Nebraska's taxation of repo income distributed to Respondent will have the deleterious effects on the marketability or attractiveness of federal obligations asserted by Respondent.

CONCLUSION

The decision of the Supreme Court of Nebraska should be reversed.

Respectfully submitted,

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DEPARTMENT OF REVENUE,
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